

CHAPTER 4

ADMINISTRATION OF THE EQUAL ACCESS FUND

1. Fund Uses Existing Administrative Structure

To administer the Equal Access Fund the Legislature took advantage of an existing statutory system for distributing grants to provide civil legal aid for low-income people—the Legal Services Trust Fund Program of the State Bar of California. This distribution system was created in 1981 to distribute interest on lawyer trust accounts in order to “expand the availability and improve the quality of existing free legal services in civil matters to indigent persons, and to initiate new programs that will provide services to them.” (Business and Professions Code section 6210) In 20 years of operation, this program has granted, and supervised the spending of, more than \$250 million from the Legal Services Trust Fund Program.³⁵

The 1981 law sets out conditions for funding legal aid providers and a formula for allocating funds among the eligible organizations. State Bar rules, guidelines, and procedures create a structure for administering and managing the grants and for holding the grant recipients accountable for spending the funds. A Legal Services Trust Fund Commission appointed jointly by the State Bar and the Judicial Council oversees day-to-day operations.

The system was designed to simplify distribution, minimize administrative costs, and assure that decisions about how the money is spent would be made locally, within certain limits. Oversight is provided by the Judicial Council, which reviews the work of the Trust Fund Commission to ensure that the conditions set out in the legislation are met. The council also provides support for the

³⁵ For a description of the other source of funding for the Legal Services Trust Fund Program, see Appendix F, Organizations Working to Support And Coordinate the Statewide System of Delivering Legal Aid to the Poor.

partnerships between legal aid providers and the courts.

2. Streamlined Grant Decisions and Funding for a Range of Legal Aid Providers

The statutory system for administering these grants uses an allocation of funds based on objective standards, aimed at spreading the money throughout the state but still keeping it concentrated enough to make a difference in the provision of services. Grants go to organizations with a primary purpose of providing free legal aid.

Two basic kinds of legal aid providers are eligible for grants: “qualified legal services projects” and “qualified support centers.”

- A *qualified legal services project* is a nonprofit corporation that provides, as its primary purpose, civil legal services without charge to persons who are indigent. Each organization must have at least a minimum level of cash funding, demonstrated community support for the operation of a viable ongoing program, and quality control procedures approved by the State Bar of California. (Business and Professions Code, §§ 6213(a) and 6214)
- A *qualified support center* is a nonprofit corporation that provides training for legal aid attorneys, technical and advocacy assistance on cases, and other backup support to qualified legal services projects, without charge and as its primary purpose. Support centers, too, must have quality control procedures approved by the bar. If they were created after 1981, they must also be deemed to be of special need by the majority of the qualified legal services projects that they serve. (Business and Professions Code sections 6213(b) and 6215) Support centers usually focus on a particular client group (National Senior Citizens Law Center, for example, or Immigrant Legal Resource Center), or they are experts in a particular field of the law (National Housing Law Project or National Health Law Program, for example). Support centers may be national organizations, but they must actually provide a significant level of service from an office in California.

For the Equal Access Fund, the Budget Act requires that funds “are to be distributed by the Judicial Council through the Legal Services Trust Fund Commission to qualified legal services projects and support centers:

- Ten percent of the Equal Access Fund is set aside for grants to eligible organizations “for joint projects of courts and legal services programs to make legal assistance available to pro per litigants.” The system for administering these grants—referred to as “partnership grants”—is described below.
- The remaining 90 percent of the funds are to be “distributed consistent with Sections 6216 through 6223 of the Business and Professions Code,” the system for allocating and spending grant funds that was created by the Legal Services Trust Fund Program statute in 1981.
- Up to \$500,000 (5 percent of the original \$10 million Equal Access Fund) is available from the amounts above for the cost of administering the fund and the grants.

3. Fund Shared Equitably Throughout California

The grants that constitute 90 percent of the Equal Access Fund, which are distributed according to a formula, are referred to as “formula grants” to distinguish them from the “partnership grants” that are discussed separately below.

The law sets out specific guidelines for distribution of the formula grants. First, 85 percent of the money is allocated to counties based upon their share of the state's more than 6 million indigent persons. Within counties, the money is divided annually among all other “qualified legal services projects” in each county according to a formula that is tied to each organization's previous year's expenditures. For example, if one provider's expenditures represented 65 percent of all the money spent the previous year by legal aid providers in that county, that provider would receive 65 percent of that county's trust fund allocation in the following year.

In any county where one or more providers use volunteer (“pro bono”) attorneys as their principal means of delivering legal services, 10 percent of the funds are specially set aside for those organizations. If there are no eligible pro bono projects in a given county, this rule is waived.

The result of this system is the distribution of grant funds to a network of local organizations that provide legal services to a vast range of eligible low-income clients in all 58 counties of the state. Local boards made up of lawyers and community representatives set priorities for using limited funds, while the State Bar provides oversight through a centralized system for grant administration and management, and the Judicial Council has ultimate review.

4. Statewide Grants Provide Efficient Backup and Support

The remaining 15 percent of the funds (the portion that is not divided among the counties) is distributed to “qualified support centers” in equal shares. These support centers provide training, technical assistance, and other forms of support for the local providers. Support centers are staffed by attorneys who have special expertise in particular fields of law or in working with particular client groups. They make their services available to the local providers so that all providers can share in the centralized expertise.

Support centers are governed by experienced boards of directors who are knowledgeable about each center’s work. Each board sets priorities for its center’s work after consultation with legal aid attorneys, members of the private bar, and eligible clients. The result of this system of statewide support centers is an efficient sharing of expertise, as demonstrated further by the descriptions and examples of the work performed by support centers with their Equal Access Fund grants.

5. Strict Rules Governing Administration of Grants

By statute, funded nonprofit legal aid providers must use their grants to provide free civil legal services to low-income people. They must adopt financial eligibility guidelines. They may not use any funds for fee-generating cases or for services in criminal proceedings. They must ensure the maintenance of quality service and professional standards, and must preserve the attorney-client privilege and the attorney’s professional responsibility to clients.

Legal aid organizations submit annual applications that include financial statements audited by independent certified public accountants. Once the grant amounts have been established, each eligible organization prepares and submits a proposed budget for using

the allocated grant funds. The budgets are reviewed by the Legal Services Trust Fund Commission, and funds are not disbursed until compliance with the statutory requirements has been verified.

During the course of the grant year, the organizations report quarterly on all expenditures of grant funds. The State Bar monitors compliance with grant conditions through a combination of document review, regular telephone contact, and on-site visits. A number of documents provide guidelines for administration of these grants:

- Regulating Rules
- Eligibility Guidelines
- General Grant Provisions
- Standards for Financial Management and Audits
- Annual Grant Agreement, which is signed by each recipient legal aid provider

The Legal Services Trust Fund Program has an extensive system for reviewing not only compliance with the grant conditions but also the quality of services provided by the funded organizations. The review is performed by experienced State Bar staff and by members of the Legal Services Trust Fund Commission who are appointed by the State Bar Board of Governors and the Chair of the Judicial Council (the Chief Justice).

6. Grant Recipients Must Demonstrate High Quality Services

Quality control systems are an important part of the requirements for the nonprofit legal aid providers that receive these grants. As part of the application process, the commission and staff review the descriptions of quality control procedures that each applicant is required to provide. In addition, bar staff and commission members conduct there are on-site visits to do programmatic and fiscal reviews.

The standards for quality control are the *Standards for Providers of Civil Legal Services to the Poor* approved by the American Bar

“The Legal Services Trust Fund Commission sets high standards for accountability and performance for its grantees. Their administration of the Equal Access Fund brings out the best in legal aid providers.”

—Gary Smith
President, Legal Aid
Association of California

Association House of Delegates. The standards address a full range of factors that affect the quality of legal aid:

- Relations with clients
- Internal systems and procedures
- Quality assurance
- Legal representation
- Special kinds of representation such as negotiation, administrative hearings, etc.
- Provider effectiveness
- Governance

Oversight of the system for delivering legal services is provided both by the board of directors of each organization and by qualified staff. As to specific staff and projects, the legal aid providers are expected to conduct periodic and regular reviews of the legal work done as a part of the project, by experienced attorneys with relevant expertise in the subject matter covered.

7. Accountability to the Judicial Council

When the Equal Access Fund was created in 1999, this system for grant administration and management had operated successfully for more than 15 years and had distributed \$200 million in Legal Services Trust Fund Program grant funds. An experienced bar staff and volunteer commission were already in place to administer the program, with full-time grants administrators working directly with grantee organizations.

The Legislature relied on this history and added to it an extra layer of accountability: the Judicial Council. The council reviews the State Bar's proposed awards, selection criteria, and administrative guidelines in order to determine that the awards comply with statutory and other relevant guidelines. Additionally, the Budget Act in 1999 required the Board of Governors of the State Bar to amend its rules in order to provide that one-third of the appointments to the commission to oversee the Equal Access Fund would be made by the Chair of the Judicial Council, and to create three advisory positions for judges, one of whom must be an appellate justice.

The Legal Services Trust Fund Commission now has 21 members. Fourteen voting members are appointed by the State Bar Board of Governors, 10 of them attorneys and 4 nonattorneys. Two of the bar's appointees must be low-income individuals eligible for service under the statute. Seven voting members are appointed by the Chair of the Judicial Council (the Chief Justice), five of them attorneys and two nonattorneys. The Chair also appoints the three nonvoting judges as advisors to the commission.

Commission members have a range of experience and knowledge relating to the delivery of legal aid services to low-income people. They include members of the private bar, government attorneys, bankers, and current and former government officials. A roster of current members of the commission is included in Appendix F, Organizations Working to Support and Coordinate the Statewide System of Delivering Legal Aid to the Poor.

Immediately after passage of the 1999 state budget, the staff of the Judicial Council Administrative Office of the Courts and the State Bar Legal Services Trust Fund Program began working together to implement the administrative structure required by the Budget Act. The bar called together a broad group of stakeholders that included representatives of the AOC, the Trust Fund Commission, and nonprofit legal aid providers. This group discussed and arrived at recommendations about many issues, including applications for grants, budgeting guidelines, grant period, reporting requirements, and so forth.

Subsequently the Administrative Office of the Courts and the State Bar entered into a contract designating their respective responsibilities and providing a process for reimbursing the bar's costs for administering the fund.

The bar's responsibilities are to distribute the funding in grants, to conduct on-site visits to evaluate both effectiveness and fiscal soundness, to select and fund partnership grant projects, and to provide technical assistance to legal aid providers. The bar also is responsible for providing planning and support of the statewide network of recipients of these funds. This task has been accomplished in part by a subcontract with the Public Interest Clearinghouse to provide statewide coordination.

"Your accomplishments are not to be taken lightly, for each success has directly improved the quality of life for California families and communities. From securing grant funds to creating cooperative ventures between courts and legal service programs to establishing the Equal Access Fund, you have contributed to the building of a legal services community that performs efficiently and effectively to serve the needs of thousands of Californians."

—Darrell Steinberg
Former State Assembly
Member

The Judicial Council and the AOC oversee the distribution of grants and the operation of the fund, review and approve requests for disbursement of the administrative cost budget, and provide technical assistance to grant recipients and courts, especially regarding the partnership grants.

8. Grants Fund Identifiable Legal Aid Projects

A key decision made by the Trust Fund Commission in cooperation with the Legal Aid Association of California, the Commission on Access to Justice, and the Judicial Council was to ask grant recipients to fund something new with the EAF grants, rather than to roll the funds into existing operating budgets. This ensured that the badly needed funding would result in increased help for clients. This decision has also made it possible from the beginning of the fund to describe directly the additional services that are provided as a result of the funding. Specifically, grant recipients were given three ways to spend the funds:

1. To create new services or start a new project.
2. To expand an existing project.
3. To sustain an existing project for which other funding has been terminated.

The new grants were used to hire additional staff or make other changes that would increase services in a demonstrable way.

The request presented a challenge, because the funding had been approved in the 1999–2000 budget on a one-time basis only. There were difficulties involved in embarking on new activities that might have to be dismantled after just one year. Initiatives that come and go are hard on both clients and staff. The need was great, however, and legal aid providers were determined to begin achieving results as quickly as possible. The fact that the decision had been made in concert with key stakeholders from the legal aid community also helped to elicit a high level of cooperation from the grant recipients.

The Trust Fund Program and the Commission on Access to Justice reviewed the grant budgets and prepared a summary of some of the services provided (see Appendix A, *The Equal Access Fund: A Wise Investment*).

Some of the projects funded in that first year had a limited term, and grant recipients went on to begin new projects or expand others in subsequent grant years. Others are still in existence and have evolved from the first year to include additional funding and to reach out to more clients and community organizations. A report prepared in 2002, describing the work being done with grants in the 2001–2002 grant year, described “enormous variation in the projects funded under this program.”

9. Unique Partnerships Created Between Legal Aid Providers and Local Courts

By the terms of the Budget Act, 10 percent of the grant funds are reserved “for joint projects of courts and legal services programs to make legal assistance available to pro per litigants.” These grants must go to “qualified legal services projects” or “qualified support centers” as they are defined in the Legal Services Trust Fund Program statute. Unlike the formula grants, however, the funds are not distributed to every qualified provider. The Trust Fund Commission and the Judicial Council have considerable leeway to select the most promising proposals.

This exercise of discretion requires more staff and commission resources (per grant) than the distribution of the formula grants. It also provides an opportunity to be strategic about the use of these funds to create new and innovative projects and ensure an appropriate balance of funding; in the five grant years, partnership grants have created, expanded or improved 25 different self-help projects at courthouses in all parts of the state.

A group of Trust Fund Commission members, court staff, legal aid directors, and AOC and State Bar staff identified and discussed questions and issues that might arise for the legal aid providers that would be applying for these grants. That group concluded that it would be important to give courts and legal aid providers considerable latitude to develop effective models to address their particular needs and resources, while still having general guidelines that all projects would be required to meet.

“The extent and success of the work of the courts and legal aid providers in California to increase access for self-represented litigants is phenomenal. The Equal Access Fund contribution to this – 25 new and improved self-help centers throughout the state in five years – is far-sighted and a model for the whole country in building a comprehensive access system.”

—Richard Zorza
Access to Justice Consultant

It was the commission's goal to fund a range of projects to address different needs. It notified the Judicial Council, for example, that it hoped to receive and fund applications from both urban and rural areas, from larger and smaller counties, addressing different areas of the law, and including other such types of diversification. This approach would provide the maximum opportunities to develop model projects to serve the diverse legal needs of Californians. Proposals were invited in the range of \$30,000 to \$80,000 each, for grants for a one-year period, with a note that grants could vary above or below that range depending on the complexity of the work proposed, the client need described, and the availability of other resources.



The commission identified for the council several criteria it intended to consider in selecting successful proposals:

- Each proposal must have the support of the applicable court's presiding judge.
- Applications should indicate how the joint project and any existing self-help center, including the family law facilitator, would work together.
- Proposed projects should provide for lawyer assistance and for direct lawyer supervision of paralegals and other support staff.
- Proposals should address how they would avoid conflicts, how they would structure the relationship between the provider and the pro per litigant, and how they would maintain the court's impartiality.
- Proposals should address how they would meet the needs of litigants not within the legal aid provider's service area or otherwise ineligible for their services.
- Grant recipients should propose ways to address the needs of unrepresented litigants who do not meet the financial eligibility requirements (for example, by using other funds to serve those individuals or by providing general information in the form of local information sheets, videos, or workshops).

For the first year of funding, the commission issued a request for proposals and received 34, seeking a total of \$2,760,945. The commission selected 12 proposals to share in the \$950,000 available. These were approved by the council. In subsequent years the commission and council have followed similar procedures for the partnership grants. Brief descriptions of all the projects funded are in Appendix C, Partnership Grant Projects.

Each year the commission has received proposals for these grants that substantially exceed the \$950,000 available. In light of that, and in recognition of the innovative approach represented by many of the projects, the commission envisions the partnership grants as a form of seed money. The grants should encourage the development of new projects and the expansion of these kinds of self-help centers to more locations and a broader range of services. After a certain period it is expected that the legal aid providers will find funding from other sources, which will free up partnership grant resources to fund more new projects.

Consequently the commission has opted to decrease the funds available for successful projects after the first or second year of full funding. After three years of funding, grants have been generally decreased more substantially, with a plan to cease funding of ongoing projects after five years of funding except in extraordinary circumstances. The commission has developed a set of criteria for making these decisions about continued funding.

10. Support for Meaningful Self-Evaluation a Key Element of Equal Access Fund Administration

The call for this report to the Legislature coincided with national initiatives to help nonprofit legal aid providers assess the efficiency and effectiveness of their own work. Providers throughout the country are developing tools for evaluation and a culture of examining the results of their services for the purpose of improving their performance. With the help of research staff at the Judicial Council's Administrative Office of the Courts, Center for Families, Children & the Courts, many Equal Access Fund grantees have become leaders in this new development.

The partnership grants from their inception required successful applicants to undertake an ambitious series of evaluations. A group of academics, lawyers, judges, and court administrators developed an evaluation protocol designed to learn what concrete effects the services have for the self-represented litigants they are designed to assist.

To expand this practice of evaluation to the work done with the project grants, the AOC and the State Bar developed an *Evaluation Toolkit* that is described in Appendix E, Progress On Self-Evaluation And Case Studies, and a variety of training materials. At four statewide

"California is a national leader in fostering self-evaluation that is both realistic and ambitious. The combination of reporting on services provided and provider-designed outcome evaluation is exactly what is needed to improve the efficiency and effectiveness of legal aid services."

—Patricia Pap
Executive Director,
Management Information
Exchange, a national center
for training and exchange of
information for legal services
programs.

conferences and a series of smaller meetings by telephone conference, beginning in 2000 and continuing through 2004, legal aid staff from 63 offices have received training on evaluation and discussed their evaluation experience and progress with one another.

This process continues and remains part of the long-term strategy to use the opportunities presented by the Equal Access Fund to evaluate and improve the delivery of civil legal aid to low-income Californians.

11. Fund Benefits From Collaborative Relationships

The administration of the Equal Access Fund gains from a collaborative relationship that exists among nonprofit legal aid providers, the Legal Services Trust Fund Commission, and the staff of the State Bar and the Administrative Office of the Courts.

For more than five years the statewide legal aid community has engaged in a planning process that coordinates the work of providers. Annual statewide meetings and a variety of other forums for ongoing communication create structures for identifying and addressing unmet needs. For example, the need for more training for local advocates outside the Los Angeles and San Francisco areas led to regular “traveling trainings” by the statewide support centers.

From its inception, the Legal Services Trust Fund Commission has consulted with the legal aid providers, educating itself about their needs and responsibilities in order to best support their strengths. The Equal Access Fund has offered additional opportunities for this approach. A specific example is the development of the design for this evaluation and the toolkit of materials to assist in local evaluations, described above. This type of collaborative model has become popular with private funders, as it appears to be more efficient and effective than traditional, more distanced models; but it is rarer in the public sector.

In recent years several factors have helped to expand this collaboration to include the state’s courts and the Judicial Council and its staff. The Judicial Council’s community-based court planning process brought advocates for low-income Californians into a dialogue with their local courts, for example. The commitment of the Chief Justice and the council to addressing the problems and needs of unrepresented litigants is what has made it possible to create the Equal Access Fund

partnership grants. Ongoing assistance from the council and the Administrative Office of the Courts has also been critically important.

12. Funds Administered Efficiently and Effectively

Administration of the Equal Access Fund began with an effective existing structure. The State Bar's Legal Services Trust Fund Program, which has been distributing grants for free legal help for low-income Californians for 20 years, used its experience to allocate the funds quickly and efficiently to a range of nonprofit legal aid providers throughout the state. Existing systems for accountability and quality control have been enhanced by the State Bar and the Judicial Council during the five years of the fund's operation. The bar and the Administrative Office of the Courts have taken the occasion of this report to increase the quantity and quality of evaluations of legal aid activities in the state.

The result is that the administration of the fund has contributed to the efficiency and effectiveness of the services ultimately provided to low-income Californians who need free legal help.

